

REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

In the amendment filed April 14, 2008, applicants pointed out the support for the now recited range of 3-15% for added non-peanut protein. Given the original disclosure of ranges, including 2-15%, 8-14% and 3-8%, one of ordinary skill would well appreciate that the range of 3-15% falls within applicants' invention. The Office indicated that the subject matter was not described in the specification "in such a way as to reasonably convey to one skilled in the relevant art" that the inventor had possession of the claimed invention. It is submitted that it would be unreasonable to hold that an inventor disclosing the above noted ranges did not consider values within the range of 3-15% as within his or her invention. Applicants request clarification as to whether the Office is still rejecting the claims under §112.

It is submitted that the §103 rejection is based on proscribed hindsight. The Office points to Billerbeck et al.'s disclosure that other sweeteners may be employed which may include synthetic groups. The Office emphasizes that Billerbeck et al. indicate that "[t]hese syrups may be used in place of honey and employed in the subject process in substantially the same manner as the honey." However, in the following line illustrative sweetening agents include corn syrup, sweetose, liquid sugar, maple syrup, etc. so it is submitted that one of ordinary skill would not be led to a low carbohydrate composition from the cited portion of Billerbeck et al. Indeed, the Office appears to ignore the language beginning at line 65 of column 2 to the effect that "[a]ll of these compositions are for the most part aqueous concentrates of sugars, mono and disaccharides having less than about 40 wt% water."

About half of the mono and disaccharides may be replaced by partially hydrolyzed starch, such as dextrin (column 3, lines 8-10). Although some dextrans may be non-digestible, taken as a whole Billerbeck et al. could hardly be said to lead one of ordinary skill to a low carbohydrate product.

The same can be said for Sevenants et al. While Sevenants et al. mention the possibility of using artificial sweeteners, the object of the invention stated in column 1, lines 39-43 is to provide a reduced fat peanut butter which has an enhanced flavor. Sevenants et al. further mention, among many other possible components, bulking agents which add body or texture to the product and are usually non-nutritive or low calorie materials. Polydextrose and maltodextrin are said to be preferred bulking agents. And sugar substitutes are also mentioned. However, again, the object is a reduced fat peanut butter with enhanced flavor and example 1 includes sugar, molasses and corn syrup solids, in addition to soy protein isolate and other ingredients. Therefore, it is submitted that one of ordinary skill in the art having before him or her the Billerbeck et al. and Sevenants et al. references, and not applicants disclosure or the Office's suggestions, would not be led to modify Billerbeck et al. using Sevenants et al. in such a way as to arrive at the presently recited low carbohydrate product.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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